

How Long Will This Lawsuit Last? (What To Expect As A Party In Civil Litigation)

February 13, 2012 | by Timothy Ford

The title may sound like a loaded question. There is a reason....because it is.

It may sound cliché, but you should expect the unexpected. How long will a lawsuit take to get resolved? That depends on a variety of factors including the type of case, the number of parties, and the venue of the case (the county where it is located). Every case is different and there is rarely an easy answer as to what to expect. Here are a few questions that my clients often ask:

How Do I File a Lawsuit?

Lawsuits are initiated by filing a **complaint** with the court in the county where the action is most appropriate. In certain circumstances, you may have the option or be required to file the action in Federal Court. In New Jersey Superior Court, civil lawsuits are initiated by filing the complaint along with a \$200 filing fee. Once the complaint is filed, it must be served on the Defendants. You do not need to have an attorney to file a complaint, unless the Plaintiff is a corporation or an LLC. New Jersey Court Rules require that corporations be represented by an attorney. If you are filing on your own behalf, you are a **pro se** (self-represented) litigant.

When Can a Case be Filed in Federal Court?

Generally, cases may be filed in Federal Court under two circumstances:

1. when the legal issue involves a federal statute.
2. when there is diversity of citizenship. What that means is that all Plaintiffs and Defendants are residents of different states and the amount the Plaintiff is seeking exceeds \$75,000.

What Happens After a Complaint is Filed?

After the complaint is filed, it needs to be served on the Defendants. The Defendants need to file an answer to the complaint or a motion seeking to dismiss the complaint. If a Defendant fails to file an answer, the Defendant will be in default and a default judgment can be sought by the Plaintiff. Once an answer is filed, the parties proceed with what is referred to as discovery. Discovery is a process of fact finding prior to trial.

What is Discovery?

Discovery involves several mechanisms for obtaining facts:

- **Interrogatories:** First, both the Plaintiff and Defendant can serve each other with interrogatories. Interrogatories are written questions that must be answered under oath.
- **Request for Relevant Documents:** Both parties may also serve request for the production of relevant documents. These requests are unlimited as to the number, but must be reasonable and not create an undue burden.
- **Depositions:** Another discovery mechanism is depositions. Depositions are question and answer sessions where testimony is taken under oath. Depositions usually take place in a conference room and the testimony is recorded by a stenographer. A transcript is prepared following the deposition.

How Long Does Discovery Take Place?

It depends on the type of case and the division the case is pending. In the Law Division, simple collection cases, forfeiture and landlord tenant proceedings have a minimum 150 day discovery period. Negligence (e.g. automobile accident and slip and fall), construction, contract and commercial cases usually have a minimum discovery period of 300 days. Finally, more complex cases such as employment discrimination, product liability, civil rights and malpractice cases have a minimum discovery period of 450 days. These time periods may be shorten or extended depending on the case.

What Happens After Discovery is Completed?

Generally, after discovery is complete, you are required to participate in alternative dispute resolution (ADR). Although ADR is not always required in Federal Court, it may be ordered by the Judge or Magistrate. ADR is either arbitration or mediation.

- **Arbitration** is: a form of ADR with a neutral decision-maker (usually a volunteer attorney) as to the liability and damages in a particular matter.
- **Mediation** is: is a form of ADR with a neutral individual who facilitates negotiation between the parties in an effort to reach a settlement.

Both are non-binding. If the parties are unable to resolve the dispute after ADR, a trial is scheduled. Often, it may take several years from the time that a complaint is filed until a trial is scheduled.

How Much Money Can I Seek?

You may seek any amount of **damages** you may like. However, you will not necessarily be successful in being awarded that amount. Generally, if you have adequate proof, you may be able to collect compensatory damages (to make you whole), pain and suffering and lost wages if the lost wages are caused by the dispute. In certain circumstances, you may be able to collect punitive damages (where compensatory damages are inadequate and when necessary to deter conduct) and attorneys' fees. Most often, you can only collect attorneys' fees if the law provides that you may get attorneys' fees or a contract or other writing provides for attorneys' fees. You must be able to prove damages. Cases filed in the Special Civil Court have a limit of \$15,000 and small claims matters are limited to \$3,000. Cases filed in the Law Division do not have a money limit.

Will my Case go to Trial?

This is not an easy question to answer. The vast majority of cases are either settled or dismissed before going to trial. Trials can be time consuming and expensive.

It is recommended that you rely on a trusted attorney to litigate your dispute. Self-representation can be difficult and confusing, especially when the other party is represented by counsel. It is important to have competent and experienced counsel to represent your interests from the beginning until the end.

If you are thinking about filing a lawsuit, you should consult with an attorney. If you have been sued, you should contact and retain an attorney to file and answer and defend you in the lawsuit.